

House File 2098 - Introduced

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BY HEARTSILL, SHEETS,
ALONS, SALMON, SCHULTZ,
WINDSCHITL, GASSMAN, and
HESS

A BILL FOR

1 An Act establishing a civil cause of action for physical injury
2 or emotional distress resulting from an abortion.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **686.1 Cause of action — abortion**
2 **resulting in physical injury or emotional distress.**

3 1. A woman upon whom an abortion has been performed may
4 maintain a cause of action against the physician who performed
5 the abortion to recover damages for any physical injury or
6 emotional distress, whether or not independent of the physical
7 injury, proximately caused as the result of the physician's
8 negligence or failure to obtain informed consent prior to
9 performance of the abortion.

10 2. Notwithstanding any law to the contrary regarding
11 limitations of actions, an action under this section may be
12 brought within ten years from and after the performance of the
13 abortion. However, if the woman is a minor at the time the
14 abortion is performed, the limitation is extended in favor of
15 the minor so that the action may be brought within ten years
16 from and after the minor's attainment of majority as provided
17 in section 599.1.

18 3. The signing of a consent form by the woman prior to the
19 abortion shall not negate the cause of action, but may reduce
20 the recovery of damages to the extent that the content of the
21 consent form informed the woman of the risk of the type of
22 injuries for which the woman is seeking damages.

23 4. This section shall not be construed to render any other
24 statutory or common law cause of action for medical malpractice
25 otherwise available inapplicable to abortion procedures or
26 diminish the nature or the extent of those causes of action.
27 The cause of action expressly specified in this section is in
28 addition to any other statutory or common law cause of action.

29 5. A cause of action shall not be brought under this section
30 if the abortion was performed due to a medical emergency.

31 6. For the purposes of this section:

32 a. "*Abortion*" means abortion as defined in section 146.1.

33 b. "*Damages*" means all special and general damages which
34 are recoverable in tort for injuries incurred by the woman
35 including but not limited to actual and punitive damages.

1 *c. "Emotional distress"* means a severe, debilitating, and
2 persistent negative emotional or mental reaction including
3 but not limited to mental anguish, fright, nervousness,
4 grief, anxiety, worry, mortification, shock, humiliation, and
5 indignity, as well as physical pain.

6 *d. "Informed consent"* means the duty of a physician to
7 disclose all facts about the nature of the procedure, the risks
8 of the procedure, and the alternatives to the procedure that a
9 reasonable patient would consider significant to the patient's
10 decision to undergo or forego an abortion.

11 *e. "Medical emergency"* means any condition which, on the
12 basis of the physician's good faith clinical judgment, so
13 complicates the medical condition of a pregnant woman as to
14 necessitate the immediate abortion of her pregnancy to avert
15 her death or for which a delay will create serious risk of
16 substantial and irreversible impairment of a major bodily
17 function.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill establishes a cause of action that may be
22 maintained by a woman upon whom an abortion has been performed
23 against the physician who performed the abortion to recover
24 damages for any physical injury or emotional distress
25 proximately caused as the result of the physician's negligence
26 or failure to obtain informed consent prior to performance of
27 the abortion. The action may be brought within 10 years from
28 and after the performance of the abortion. However, if the
29 woman is a minor when the abortion is performed, the limitation
30 is extended in favor of the minor so that the action may be
31 brought within 10 years from and after the minor's attainment
32 of majority. The bill provides that the signing of a consent
33 form by the woman prior to the abortion does not negate the
34 cause of action, but may reduce the recovery of damages to
35 the extent that the content of the consent form informed

1 the woman of the risk of the type of injuries for which the
2 woman is seeking damages. The bill also provides that other
3 existing statutory or common law causes of action for medical
4 malpractice are not to be construed to be rendered inapplicable
5 to abortion procedures or diminish the nature or the extent
6 of those causes of action. The cause of action expressly
7 specified in the bill is in addition to any other statutory or
8 common law cause of action. A cause of action is prohibited
9 under the bill if the abortion was performed due to a medical
10 emergency.

11 The bill defines "abortion", "damages", "emotional
12 distress", "informed consent", and "medical emergency" for the
13 purposes of the bill.